IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 3092 of 1992

For Approval and Signature:

HON'BLE MR.JUSTICE KSHITIJ R.VYAS

HON'BLE MR.JUSTICE AKSHAY H.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge?

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MEMON IBRAHIM HAJI LATIF SUKHEDWALA - Petitioner(s)

Versus

OFFICER OF SPECIAL DUTY NO 3 & 3 - Respondent(s)

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MEMON IBRAHIM HAJI LATIF SUKHEDWALA - Petitioner(s)

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OFFICER OF SPECIAL DUTY NO 3 & 3 - Respondent(s)

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Appearance :
Ms. Sameera Shah for MR SN SOPARKAR for Petitioner No(s).: 1.

Mr H L Jani, Asstt.GOVERNMENT PLEADER for Respondent No(s).: 1,2.
MR SN THAKKAR for Respondent No(s).: 3.
Ms. Rupa R Rane with MR SN SHELAT for Respondent No(s).: 4.
NANAVATI & NANAVATI for Respondent No(s).: 4.
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CORAM : HON'BLE MR.JUSTICE KSHITIJ R.VYAS
and
HON'BLE MR.JUSTICE AKSHAY H.MEHTA

Date : 13/06/2005

ORAL JUDGMENT

(Per : HON'BLE MR.JUSTICE AKSHAY H.MEHTA)

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This petition is directed against the order of respondent no.1 dated 4.12.1991 whereby the petitioner's application made under the provisions of section 18 of the Land Acquisition Act, 1894 (hereinafter referred to as 'the Act'), has been rejected on the ground of it being barred by period of limitation. The petitioner owned agricultural land at Village Beghdi bearing survey no.56 admeasuring 3 hectares and 24 Are. Respondent no.1, on 31.3.1983, issued Notification under section 4(1) of the said Act in respect of the said land, with a view to commence the acquisition proceedings and to invite objections of the petitioner. After complying with the due procedure, ultimately the above award was

made under section 11 of the Act on 22.4.1988. It appears that at the time when the award was made, the petitioner was present. He submitted an application for obtaining copy of the award which was made available to him on 10.7.1988. Subsequently, on 1.8.1988, he made an application under section 18 of the Act to respondent no.1 to make necessary reference since the petitioner was not satisfied with the amount of compensation awarded. On receipt of the application, respondent no.1 issued show cause notice to the petitioner calling upon him to explain why his application should not be rejected in view of the fact that it was filed after the expiry of the limitation prescribed in sub-section (2) of section 18 of the Act. Show cause notice was served on the petitioner on 15.3.1990 and he replied to it on 29.3.1990. After affording the opportunity of hearing to the petitioner, respondent no.1 came to the conclusion that the petitioner was present when the award was made. He, therefore, decided that since the application was made after expiry of six weeks from the date of the award, there was a delay in making the application. Hence respondent no.1 rejected the application. The petitioner has now challenged the said order in this petition.

2. Ms. Sameera Shah, learned Advocate appearing for Mr S N Soparkar for the petitioner has submitted before us that respondent has committed an error in holding that the application of the petitioner was made after the expiry of period of limitation prescribed in sub-section (2) of section 18 of the Act. According to her, there was no delay at all since the copy of the award was made available to the petitioner only on 10.7.1988 and the necessary application was made to respondent no.1 on 1.8.1988. She has further submitted that considering the provisions of sub-section (1) of section 18 of the Act which enable any person interested to make a written application to the Collector for making a reference by respondent no.1 for the determination of the Court provided the objection is with regard to measurement of the land, the amount of compensation, the persons to whom it is payable or the apportionment of the compensation among the persons interested. She, has therefore, submitted that all or any of the grounds which can be agitated by such person will have to be based on facts of each case and unless the material considered and the reasonings adopted by the Special Land Acquisition Officer to arrive at a particular conclusion made in the

award are known to the person interested, it will be possible for him to challenge the said award. According to her submission, the availability of the award is absolutely essential to enable the aggrieved party to make necessary application to respondent no.1. She has also submitted that there are two proviso to sub-section (2) viz; (a) and (b). So far as the present petitioner is concerned, his case stands covered under the proviso (a). So far as proviso (b) is concerned, it relates to the persons who are not present at the time of making of the award. In that case, respondent no.1 is required to issue notice under section 12(2) of the Act giving intimation and the person interested has to make application under section 18 (2) of the Act within a period of six weeks or when no notice is given within six months of respondent no.1's award. According to her, if the case is covered under the earlier part of (b), the Collector will have to give notice containing the gist of the award or along with the notice, he will have to supply copy of the award as per the decision of the Full Bench of this Court rendered in the case of Memon Ibrahim Haji Latif Sukhediwala v. Officer on Special Duty (Land Acquisition) & Anr. reported in 35(1) GLR p.296. She has, therefore, submitted that the persons covered

under proviso (b) to sub-section (2) of section 18 are placed on a better footing than the persons who are falling under proviso (a) to the said sub-section. According to her, there is discrimination and hence these provisions are violative of Article 14 of the Constitution of India. Lastly, she has submitted that in computing the period of limitation for any application to set aside an award, the time requisite for obtaining the copy of the award should be excluded as per the provision of sub-section (4) of section 12 of the Limitation Act.

3. As against that Mr S N Shelat, learned Advocate General has submitted that the contentions advanced by Ms. Shah no longer require any consideration because all these contentions have been adequately answered in the earlier decisions of either the Apex Court or of this Court and the controversies involved in this case have already been determined. He has submitted that so far as the provisos to sub-section (2) of section 18 are concerned, they do not envisage supply of copy of award to the concerned persons. If that be so, the Collector is not required to either convey the gist of the award or supply copy thereof to the persons interested. He has submitted that the period of limitation prescribed in

this sub-section is mainly with a view to enable such person to either ascertain the contents of the award or to obtain a copy thereof and if the application is made after the expiry of six weeks, it would be barred by the law of Limitation. He has, therefore, submitted that respondent no.1 has not committed any error in turning down the application of the petitioner.

In support of his submissions, Mr Shelat has placed reliance on certain decisions of the Apex Court as well as this Court.

4. Looking to the controversy involved in this petition, we will first have to refer to the provisions of section 18 of the Act which are as under:

> “18. Reference to Court :
>
> (1) Any person interested who has not accepted the award may, by written application to the Collector, require that the matter be referred by the Collector for the determination of the Court whether his objection be to the measurement of the land, the amount of compensation, the persons to whom it is payable, or the apportionment of the compensation among the persons interested.

(2) The application shall state the grounds on which objection to the award is taken:

Provided that every such application shall be made -

(a) if the person making it was present or represented before the Collector at the time when he made his award, within six weeks from the date of the Collector's award:

(b) In other, cases within six weeks of the receipt of the notice from the Collector under sec.12, sub-section (2), or within six months from the date of the Collector's award, whichever period shall first expire."

As can be seen, in the present case, the award is made by the Special Land Acquisition Officer under section 11 of the Act on 22.4.1988. It appears that at the time when the award was made, the petitioner was present. When such is the situation, as per the provisions of sub-section (2) of section 18 of the Act, the person seeking reference through the Collector is required to submit application within a period of six weeks from the date of the Collector's award. Admittedly, in the present case, the application has not been submitted to the Collector by the petitioner within

the stipulated time since the application made by the petitioner is dated 1.8.1988. Respondent no.1, relying upon the aforesaid proviso to sub-section (2) of section 18, rejected the application on the ground that it was submitted after the expiry of the period of limitation prescribed under the relevant provisions. According to Ms. Shah, the order of rejection of the application is illegal since there is no delay caused in making the application. We have already recorded the submission of Ms. Shah in this behalf. The question that is required to be considered by us is whether the time spent for making the copy of the award available to the person interested, is required to be excluded while computing the period of limitation or not. According to Ms. Shah, it is required to be excluded under section 12(4) of the Limitation Act and also because sub-section (1) of section 18 prescribes all the grounds on which reference can be made purely relate to the facts of the case. Unless these facts are known to the concerned claimant, he will not be in a position to make a case for reference.

5. We have carefully considered the submissions of Ms. Shah. It is true that considering the grounds which have

been envisaged in section 18 of the Act, the person interested is required to ascertain the facts which are placed before the Collector. However, it clearly appears that the period of six weeks for making the application has been prescribed by the legislature with the sole intention that during such time, the claimant can either obtain a copy of the award or at least ascertain the facts. If that is so, making of the application cannot depend on the availability of the award to the persons interested. It further appears to us that the present controversy is no more required to be decided by us, since the Apex Court and this court have by now, laid to rest the issue.

6. In a decision in the case of *Officer on Special Duty (Land Acquisition) & Anr. v. Shah Manilal Chandulal,* reported in 1996 Gujarat Law Reporter vol 37 (2), p. 626, the Apex Court has held that the Collector being not a Court, cannot condone the delay in making an application for reference. The Apex Court in that case, was required to consider the provisions of section 5 of the Limitation Act, 1963 vis-a-vis, sub-section (2)(b) of section 18 of the Act. The Apex Court, while deciding the case held as under:

“It is to remember that the Land acquisition (Amendment Act (68 of 1984) was enacted prescribing the limitation to exercise the power under section 4, 6 and 11 and also excluded the time occupied due to stay granted by the Courts. Taking cognizance of the limitation prescribed in proviso to sub-section (2) of section 18, the provisions of the Limitation Act were not expessly extended. Though section 29(2) of the Limitation Act is available, and the limitation in proviso to sub-section (2) of Land Acquisition (Amendment) Act, the act specifically maintains only statutory duties under the Act, including one while making reference under section 18. It is difficult to construe that the Collector/L.A.O. While making reference under section 18, as statutory authority still acts as a Court.

Though hard it may be, in view of the specific limitation provided under proviso to section 18(2) of the Act, we are of the considered view that sub-section (2) of section 29 cannot be applied to the proviso to sub-section (2) of section 18. The Collector/L.A.O., therefore, is not a Court when he acts as a statutory authority under section 18(1).

Therefore, section 5 of the Limitation Act cannot be applied for extension of the period of limitation prescribed under proviso to sub-section (2) of section 18. The High Court, therefore, was not right in its finding that the Collector is a Court under Section 5 of the Limitation Act."

7. Relying upon a decision of the Hon'ble Supreme Court, the Division Bench of this Court in the case of *Ziniben v. Union of India,* reported in 2003(3) GLH 12, has decided that provisions of section 18 (2) are neither unreasonable nor capricious, arbitrary or illegal. It was further held that section 18(2) has been made to see that no undue burden is caused on the public purse particularly when the purpose of acquisition is for public purpose. The object of law of limitation is in accordance with the maxim interest i.e. the interest of the State requires that there should be an end to litigation. The court has even said that the provisions of section 18(2) of the Act are not unconstitutional.

8. In another decision in the case of *Special Land Acquisition Officer, Himatnagar v. Nathaji Kacharaji,* reported in 2001 (3) GLH 312, the Full Bench of this

Court adequately dealt with the controversy involved in the case. It shows that the said case was essentially related to proviso (b) of sub-section (2) of section 18 of the Act. However, the Court took into consideration both the eventualities that have been described in the proviso (a) and first part of proviso (b) of sub-section (2) of section 18 of the Act. It has also considered the question whether the time required for furnishing the copy of the award to the claimant is required to be excluded while computing the period of limitation. In the opinion of the Full Bench, such time cannot be excluded while computing the period of limitation. The court has placed reliance on an earlier decision as well as the provisions of section 28A of the Act to make a comparative study of both the provisions i.e. Section 18(2) and 28A of the Act. The court has taken into consideration the fact that under the provisions of section 28A (1), in particular proviso to sub-section (1) of the said section it is provided that the time spent for obtaining the copy of the award of the court should be excluded while computing the period of limitation. No such specific provision is made in section 18(2) of the Act. In view of the same the Full Bench has held as under:

"Under sub-section (1) of section 28A, a person seeking reference through the Collector of his case on the basis of award of another land-owner covered by the same notification, has to make application within the prescribed three months' period of limitation from the date of award. The proviso to sub-section (1) of section 28A expressly allows exclusion of date of passing of the award by the court and time requisite for obtaining copy of the award of the court for computing the period of limitation. What is noticeable is that such exclusion of time of date of passing of the award and obtaining copy of the award is not to be found in section 18 of the Act which enables land owner to seek reference by making application to the Collector within prescribed period of limitation, i.e. six weeks or six months as the case may be. Obviously, therefore, as has been rightly pointed out by the learned Judges of the Division Bench who have made this Reference to the Full Bench, the proviso below section 28A of the Act cannot be made applicable directly or by implication to the proviso to section 18 of the Act, as doing so would be

violence to the provisions of section 18 under consideration."

9. Thus, when the Full Bench of this Court held that the decision of the Apex Court referred to above applies to both the proviso i.e. Proviso (a) and (b) to sub-section (2) of section 18 and it is further held that the time spent for obtaining the copy of the award made available to the claimant cannot be excluded while computing the period of limitation, there is no reason for us to take a different view. The aforesaid decisions, especially the decision of the Apex Court in the case of *Officer on Special Duty v. Shah M C (supra)* also answers the submission of Ms. Shah based on the provisions of section 12(4) of the Limitation Act.

10. In view of the above, the submissions of Ms. Shah cannot be accepted. As these issues are dealt with by the Full Bench and they have been decided contrary to the view canvassed by the petitioner, we hardly see any merit in the matter. In the circumstances, it clearly appears to us that the impugned order of the Collector is just and proper and it does not call for any interference by this Court.

11. The petition is dismissed accordingly. Rule discharged. No order as to costs.

[Kshitij R Vyas, J.]

[Akshay H Mehta, J.]

msp